

NATURAL RESOURCES DEPARTMENT[561]

Notice of Intended Action

**Proposing rule making related to appeals of administrative orders
and providing an opportunity for public comment**

The Department of Natural Resources (Department) hereby proposes to amend Chapter 7, “Rules of Practice in Contested Cases,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 455A.4.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 455B.110.

Purpose and Summary

The proposed amendments are necessary to align Department rules with 2019 Iowa Acts, Senate File 409, signed by Governor Reynolds on May 9, 2019. Senate File 409, in part, amends the process and timeline for individuals to appeal administrative orders issued by the Department. The legislation clarifies when the appeal period commences and extends the appeal period from 30 days to 60 days. This proposed rule making is intended to implement that legislative change.

Additionally, the proposed amendments address an existing anomaly in Department rules that requires the Environmental Protection Commission and the Natural Resource Commission to consider a proposed decision before the appeal period for that decision has concluded. This anomaly results in the Commissions considering proposed decisions that may still be appealed by the affected parties. This proposed rule making does not alter the rights of any party, including the rights of Commissioners to adopt, reject or revise proposed decisions. It simply allows the Commissioners to consider a proposed decision after the conclusion of the appeal period.

Fiscal Impact

This proposed rule making has no fiscal impact to the State of Iowa. A copy of the fiscal impact statement is available from the Department upon request.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found. A copy of the jobs impact statement is available from the Department upon request.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 561—Chapter 10.

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on February 5, 2020. Comments should be directed to:

David Scott
Iowa Department of Natural Resources
1023 West Madison Street
Washington, Iowa 52353
Email: david.scott@dnr.iowa.gov

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows. Upon arrival, attendees should proceed to the fourth floor to check in at the Department reception desk and be directed to the appropriate hearing location.

February 5, 2020
1 to 2 p.m.

Conference Room 4E
Wallace State Office Building
Des Moines, Iowa

Persons who wish to make oral comments at the public hearing will be asked to state their names for the record and to confine their remarks to the subject of this proposed rule making.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend subrule 7.4(1) as follows:

7.4(1) Time. ~~Any person appealing an action of the department shall file a written notice of appeal within 30 days of receipt of notice of the department's action, unless a shorter time period is specified by a particular statute or rule governing the subject matter or by the agency action in question. The written notice of appeal shall be filed with the director with a copy to the Bureau Chief, Legal Services Bureau, Department of Natural Resources, 502 East 9th Street, Des Moines, Iowa 50319.~~

a. Any order issued by the director of the department shall comply with the requirements established in Iowa Code section 455B.110 and may be appealed. The written notice of appeal of the order must be received by the director within 60 days of proper issuance of the order.

b. Any person appealing any other action by the department that is subject to appeal shall file a written notice of appeal within 60 days of the action, unless a shorter time period is specified by a particular statute or rule governing the subject matter of the action.

c. Unless otherwise stated in the order or notice provided, any written notice of appeal shall be filed with the director of the department, and a copy shall be sent to the legal services bureau chief.

ITEM 2. Amend subparagraph **7.17(5)“a”(2)** as follows:

(2) Agency decision to review. The agency may initiate review of a proposed decision on its own motion ~~at any time within 30 days following the issuance of the proposed decision or at the next regular meeting of the relevant commission, whichever date last occurs after the appeal period in subparagraph 7.17(5)“a”(1) has concluded.~~ The agency shall preside in the case of review of a proposed decision of the administrative law judge or appeal board on motion of the agency.